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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,425	08/05/2008	Dina L Richman	60335-USA	5846
7590 Patent Administrator FMC Corporation 1735 Market Street Philadelphia, PA 19103		EXAMINER LEVY, NEIL S		
		ART UNIT 1615		
		MAIL DATE 11/23/2010		
		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,425

Applicant(s)

RICHMAN ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102 are overcome by the current amendments.

Claim Rejections - 35 USC § 103

Claims 1-2,9-12 are rejected under 35 U.S.C. 103(a) as obvious over ASRAR 6660690.

See composition 76

Pests controlled include cockroach, termite, ant, fire ant, mosquito and others (col 23, lines 13-col 24, line 3). The actives are 1:1000 to 1000:1 (col 25, lines 5-13).

Compositions are at col 26, lines 22-28, at 0.5 to 99% as suspensions or slurries

Thus, within the instant claim 2 range. Also, at col 28, top, the range is 0.005-50%.

claim 2 is obvious, as the ratio & range is within the reference (col 22, lines 11-16 thus for household pest control).

Claims 1-4, 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over ASRAR 6660690 and KNAUF et al WO 02/30200 or ARTER- WO 02/43494 or LAHM et al US 2004/0198984 or OTSU et al 5661164

Pests controlled include cockroach, termite, ant, fire ant, mosquito and others (col 23, lines 13-col 24, line 3). The actives are 1:1000 to 1000:1 (col 25, lines 5-13).

Compositions are at col 26, lines 22-28, at 0.5 to 99% as suspensions or slurries

Thus, within the instant claim 2 range. Also, at col 28, top, the range is 0.005-50%.

claim 2 is obvious, as the ratio & range is within the reference (col 22, lines 11-16 thus for household pest control).

Secondary references also control household pests-clothes moths, mosquitoes, flies, cockroach, ants, wasps, termites .A limited number of insecticides are shown, and it would be within the purview of the pesticide applicator to test the combinations, inclusive of the instant, in order to optimize effects.

KNAUF @ page 2 treats bed bugs, flies, lice, ticks with liquid formulations, using an equivalent pyrethroid , deltamethrin, with acetamiprid(p. 1). Low instant dosages are evident on page 6.

ARTHER uses 1 of only 27 neonicotinoids against the same household pests (p. 2) with deltamethrin (p. 3).

LAHM also treats household pests (p. 28, midpage and p.29 of [0236] with a mix of bifenthrin and acetamiprid as combinations selected from a limited number of pesticides (claim 12).

OTSU uses similar compounds to acetamiprid (col. 4,5) with deltamethrin or bifenthrin(col. 6) .

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the ASRAR modified as desired to increase toxicity to pests , by optimizing the mix of pesticides to be used.

Testing of the likely combinations, of a specific number of actives, is seen as standard operating procedure to maximize effects, in consideration of the 2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects. Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Response to Arguments

Applicant's arguments filed 9/16/2010 have been fully considered but they are not persuasive. Arguments focus on examples of synergy not indicated in the prior art. however, they are applicable to methods limited to the 2 actives, while claims are open, & compositions. The compositions are shown in the prior art, & within the skill of the artisan to formulate as equivalent & alternative combinations of those exemplified in the cited references..

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
ART UNIT 1615

11/19/2010